

**AMENDMENT NUMBER 2
TO
CONTRACT NO. DIR-TSO-2546
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
DELOITTE CONSULTING LLP**

This Amendment Number 2 to Contract Number DIR-TSO-2546 (“Contract”) is between the Department of Information Resources (“DIR”) and Deloitte Consulting LLP (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

The term of this Contract is extended for one (1) year through April 28, 2016. If vendor has no sales for the one-year term, DIR will not extend or negotiate any extensions. The Contract will expire April 29, 2016. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement, for up to the remaining two (2) additional one-year terms.

2. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 7. Pricing, Purchase Orders, Invoices, and Payments**.
3. **Contract, Section 8. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 4. Intellectual Property Matters**.
4. **Contract, Sections 5 - 9** are hereby re-numbered **Sections 4 – 7**.
 - A. **Section 5. DIR Administrative Fee** is re-numbered as **Section 4. Administrative Fee**;
 - B. **Section 6. Notification** is re-numbered as **Section 5. Notification**;
 - C. **Section 7. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements** is re-numbered as **Section 6. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements**;
 - D. **Section 9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts** is re-numbered **Section 7. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts**.

5. **Appendix A, Standard Terms and Conditions for Services Contracts dated 8/9/13**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 02/04/15**, as attached.

6. **Section 3, General Provisions**, is hereby replaced in its entirety:

Either DIR or Customer may reasonably require Vendor to provide proof of financial stability prior to or at any time during the contract term.

7. **Section 4. Intellectual Property Matters, E. Confidentiality**, is hereby restated:

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. Notwithstanding the foregoing, (i) Vendor may disclose such information as may be required by law, rule, regulation, judicial or administrative process, and (ii) Vendor may disclose such information (1) to subcontractors that are providing services in connection with an SOW and that have agreed to be bound by the confidentiality obligations of this Section; or (2) to the extent such information (i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure in breach hereof, (ii) becomes available to Vendor on a non-confidential basis from a source other than DIR or Customer that Vendor believes is not prohibited from disclosing such information to Vendor by obligation to DIR or Customer, (iii) is known by Vendor prior to its receipt from DIR or Customer without any obligation of confidentiality with respect thereto, or (iv) is developed by Vendor independently of any disclosures made by DIR or Customer to Vendor of such information. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer; provided that Vendor shall use, disclose or obtain any Vendor IP (as defined below) that may be contained in such Work Product.

8. **Section 6, Contract Fulfillment and Promotion, C. Services Warranty and Return Policies**, is hereby restated:

Vendor warrants that the Services shall be performed by competent personnel in a workmanlike manner, and shall be of professional quality consistent with generally accepted industry standards for the performance of the Services. VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **Section 6, Contract Fulfillment and Promotion, H. DIR Cost Avoidance**, is hereby restated:

DIR reserves the right to work with Vendor to develop and implement a method to track cost avoidance the State has achieved through the Contract. Vendor shall fully cooperate with DIR to implement a mutually agreed upon cost avoidance methodology for the Contract.

10. **Section 9, Vendor Responsibilities, A. Indemnification, 1) Independent Contractor**, is hereby restated:

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

11. **Section 9, Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions**, is hereby replaced in its entirety:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS FOR PERSONAL INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, OR ASSOCIATED ECONOMIC LOSS AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

12. **Section 9, Vendor Responsibilities, A. Indemnification, 3) Infringement**, is hereby restated:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES (FOR PURPOSES OF THIS PROVISION, "STATE") from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING

ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. No such indemnification shall apply to claims arising solely from the State's misuse or modification of Vendor's services or deliverables; the State's failure to use correction or enhancements made available by Vendor; the State's use of such services or deliverables in combination with any product, materials or information not provided by Vendor; or information, material or specifications provided by or on behalf of the State.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

13. Section 9, Vendor Responsibilities, F. Use of Subcontractors, is hereby restated:

DIR and Customer each hereby consents to Vendor subcontracting any of Vendor's rights or obligations hereunder to any affiliate or related entity. If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

14. Section 9, Vendor Responsibilities, H. Confidentiality, is hereby restated:

- 1) Vendor acknowledges that DIR and Customers are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act. Except as provided for in the immediately preceding sentence, or as otherwise agreed to in an SOW, each of DIR and Customer agrees that all Services and Deliverables shall be solely for Customer's informational purposes and internal use, and are not intended to be, and should not be, relied upon by any person or entity other than Customer. Except as otherwise specifically provided herein and only to the extent consistent with the Texas Public Information Act, DIR and the Customer shall not disclose the Services or Deliverables, or refer to the Services or Deliverables in any communication, to any person or entity other than DIR or Customer and other contractors of Customer to whom Customer may disclose the Deliverables solely for the purpose of such contractors providing services to Customer relating to the subject matter of the applicable SOW. Notwithstanding the foregoing, Customer shall not be prohibited from creating its own materials based on

the content of such Services and Deliverables and using and disclosing such Customer-created materials for external purposes, provided that Customer does not, expressly or by implication, in any manner whatsoever, attribute such materials to Consultant or otherwise refer to or identify Consultant in connection with such materials.

- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

15. Section 9, Vendor Responsibilities, O. Required Insurance Coverage, is hereby replaced in its entirety:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated by A.M. Best, and duly licensed, admitted, and authorized to do business in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor thereunder. Vendor will provide thirty (30) days' prior written notice to DIR and the Customer in the event of cancellation or non-renewal of any required coverage. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance of \$500,000. The policy shall contain the following provisions:

- a) Contractual liability coverage for liability assumed under the Contract;
- b) State of Texas, DIR and Customer listed as an additional insured;
- c) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT

(ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) Additional Insured.

16. Section 10, Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby restated:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order for convenience if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer. If Customer terminates for cause then the provision of Section 9, B.4 shall apply.

17. Section 10, Contract Enforcement, B. Termination, 4) Termination for Cause, is hereby restated:

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. The notice shall specify the nature of the default. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of said notice to cure said default (or provide an acceptable plan for correction). If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Beyond this point, contract disputes will be addressed in accordance with Chapter 2260, Texas Government Code. Customers purchasing services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of written notice specifying the nature of the breach to cure said default (or provide an acceptable plan for correction). If the defaulting party fails to cure said default within the timeframe

allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Beyond this point, contract disputes will be addressed in accordance with Chapter 2260, Texas Government Code.

18. Section 10, Contract Enforcement, C. Force Majeure, is hereby restated:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, or other causes recognized by the Supreme Court of Texas as forces majeure, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order for its convenience if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer due to a Force Majeure event.

19. Section 13, Mutual Cooperation, is hereby restated:

Each party shall reasonably cooperate with the other party in the performance of the Contract, including provision by Customers of timely access to data, information, and its personnel. Customers shall be responsible for the performance of their personnel and agents and for the accuracy and completeness of data and information provided to the Vendor. The Vendor's performance is dependent upon the timely and effective satisfaction of Customer's responsibilities under Purchase Orders and timely decisions and approvals of each such Customer in connection with the services. Vendor shall be entitled to rely on all decisions and approvals of the Customer.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment 2, then Amendment 1, and then Contract DIR-TSO-2546.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 2 to be effective upon the date of the last signature but in all events, not later than April 28, 2015.

Deloitte Consulting LLP

Authorized By: Signature on File

Name: Kristen Miller

Title: Principle

Date: July 22, 2015

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operations Officer

Date: August 28, 2015

Office of General Counsel: DRBrown 08-25-2015